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ROSLI DAHLAN v. IG TAN SRI RAZARUDIN HUSAIN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[JUDICIAL REVIEW NO: WA-25-420-12-2023]
25 JULY 2024

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Abstract – *The actions of the police to act in a 'freeze first, investigate later' manner contravenes Parliament's purpose in enacting s. 44 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA'), which is to ensure that enforcement agencies could only issue a freezing order where there are reasonable grounds to suspect that an offence under s. 4(1) of the AMLA had been committed or that the property in question is the result of an unlawful activity. Freezing orders are found to be fundamentally flawed if they do not fulfill the requirements under s. 44 of the AMLA, which requires the investigating officer to be satisfied with the target of the investigation, the actual offence being investigated and whether the offence had taken place or is about to take place.*

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ADMINISTRATIVE LAW: *Judicial review – Leave – Application for – Certiorari and mandamus – Seeking orders to challenge arrest, detention, remand, issuance of freezing orders against applicant's bank accounts, exit prohibition and imposition of travel ban – Whether there was abuse of powers by police – Whether police actions actuated by malice and mala fide – Whether subject matter amenable to judicial review – Whether there were triable issues – Whether applicant's case frivolous or vexatious – Rules of Court 2012, O. 53*

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POLICE: *Powers – Abuse of powers – Applicant arrested, detained, bank accounts frozen and prevented from leaving country on suspicion of money laundering offence – Applicant applied for leave to file judicial review proceedings to challenge and quash actions made by police against him – Whether police actions actuated by malice and mala fide – Whether subject matter amenable to judicial review – Whether there were triable issues – Whether applicant's case frivolous or vexatious*

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The applicant, an advocate and solicitor, filed an amended application for leave to commence judicial review proceedings (encl. 9) under O. 53 of the Rules of Court 2012 ('ROC'), seeking, *inter alia*: (i) orders of *certiorari* challenging the arrest, detention, remand, issuance of the freezing orders against the applicant's several bank accounts, exit prohibition and travel ban imposed against the applicant; and (ii) orders of *mandamus* compelling the respondents to revoke and/or vary the freezing orders and to unfreeze the applicant's bank accounts and to revoke the exit prohibition and travel ban. The applicant claimed that the respondents, on the pretext that an offence under s. 4 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA') had been committed,

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abused their powers and the process of law in making a false and wrongful nexus to link the applicant to a case involving other parties in order to oppress, injure, smear the applicant and tarnish his reputation as a lawyer. The applicant further submitted that the blanket freezing of all the applicant's bank accounts was unreasonable and disproportionate and was made without investigation as the accounts which were frozen had no connection whatsoever to the matter investigated. The applicant submitted that he had and would continue to suffer damage, harm, loss, violation of fundamental rights and infringement of rights and interests resulting from the decision, action and/or omission of the respondents to exercise their public duties and/or functions. At the outset of the hearing, the respondents raised a preliminary objection, premised on the grounds that the respondents' actions and/or decision were not amenable to judicial review and that since the filing of the instant application, they had lifted the freezing orders as well as the exit prohibition and travel ban against the applicant, thereby rendering those issues academic at the hearing of the application.

Held (allowing application):

(1) The PDRM had orchestrated a series of events in abuse of their powers as a law enforcement agency to subject the applicant to a series of *mala fide* actions based on false nexus and malicious slander. The respondents' actions and/or decisions as officers of the PDRM to falsely and maliciously link the applicant to a case that had no connection whatsoever to the applicant was an abuse of power, which also led to the subsequent wrongful arrest and remand, and the issuance of the wrongful freezing orders, wrongful exit prohibition and wrongful travel ban. The actions and/or decision-making process were based on the exercise of power by the PDRM and its officers under the AMLA, which were amenable to judicial review. (paras 49-50)

(2) The first to fifth respondents had acted in concert to falsely link the applicant to Police Report No. 4381/23 by Air Asia Berhad ('Air Asia') against i-Serve Technology ('i-Serve') and Vacations Sdn Bhd based on an incident in 2018 which was classified as fraud under s. 420 of the Penal Code. The applicant was not connected in any way whatsoever to that matter. The applicant was not a shareholder/director/officer/employee of i-Serve and had no connection/involvement in the management or operation of i-Serve. Based on that police report which had no connection whatsoever to the applicant, the applicant was wrongfully arrested and remanded; his bank accounts were wrongfully frozen; and he was subjected to a wrongful travel ban. (paras 51 & 52)

(3) On 27 October 2023, after the remand proceedings ended, the applicant was not released immediately but was taken to the police Commercial Crimes Investigation Department ('JSJK') at Menara KPJ where a group of reporters were waiting to photograph him. This was clearly

A orchestrated to embarrass the applicant who was then in handcuffs and wearing an orange uniform and chained to other police prisoners. The applicant was not examined nor was any statement recorded from him on that day. Quite clearly, the arrest and remand were not for investigative purposes. This malicious act justified a review by this
B court. The wrongful arrest and wrongful detention were tainted with illegality as there was no basis to allege any offences had been committed by the applicant when the Police Report 4381/23 was in fact, a business dispute between Air Asia and i-Serve. (paras 53 & 54)

(4) The first time the applicant was investigated (examined and first
C statement recorded) was on 3 November 2023, eight days after he was arrested. He was served with eight freezing orders dated 20 October 2023 for his Maybank and ASNB accounts. The freezing orders did not contain any travel ban. On 18 November 2023, the applicant was prohibited from leaving the country. He incurred loss and damages due
D to the travel ban. On 23 November 2023, the applicant was present at Menara KPJ for the recording of his second statement. Only then was he served with two freezing orders dated 20 October 2023 for his CIMB accounts. The fifth respondent had acted arbitrarily by serving the freezing orders of the CIMB accounts on 23 October 2023 even though
E the order was dated 20 October 2023. It must be noted that the freezing orders for the applicant's Maybank and ASNB accounts were served earlier on 3 November 2023. This showed bad faith. (paras 55-57)

(5) The actions of the first to fifth respondents to act in a 'freeze first, investigate later' manner contravened Parliament's purpose in enacting
F s. 44 of the AMLA, which was to ensure that enforcement agencies, including the police, could only issue a freezing order where there were reasonable grounds to suspect that an offence under s. 4(1) of the AMLA had been committed or that the property in question was the result of unlawful activity. The freezing orders in the instant case were
G fundamentally flawed as they did not fulfill the requirements under s. 44 of the AMLA which required the investigating officer to be satisfied with the target of the investigation, the actual offence being investigated and whether the offence had taken place or was about to take place (paras 56-60)

H **(6)** The wrongful exit prohibition order against the applicant was dated 25 October 2023 whereas all the wrongful freezing orders were dated 20 October 2023. This was so despite the fact that the wrongful exit prohibition order was purportedly issued under s. 44(4)(c) of the AMLA. The sixth respondent ought to have known that the travel ban
I on the applicant was thus *ultra vires* s. 44(4)(c) of the AMLA as it was purportedly made on 25 October 2023 whereas the freezing orders were made on 20 October 2023. This contravened s. 44(4)(c) of the AMLA

whereby the exit prohibition order could not stand independently of the freezing order. The wrongful freezing orders would need to be determined as it had led to a seizure order under s. 50 of the AMLA. Any subsequent order flowing from the wrongful freezing orders would be void. This was thus not academic. (paras 61-63)

(7) Similarly, the wrongful exit prohibition and wrongful travel ban was not academic. There were factual and evidential issues as to the imposition and the upliftment of the wrongful exit prohibition and/or the wrongful travel ban. These were live issues and not academic. Even if the wrongful travel ban had now been uplifted, the legality and/or illegality of the wrongful travel ban was a live issue to be determined by this court. (paras 64 & 65)

(8) The applicant's case was not frivolous and vexatious. The applicant had passed the threshold to commence judicial review proceedings. There were triable issues regarding the arrest and remand, impugned freezing order, impugned exit prohibition and impugned travel ban. These triable issues justify further argument by the parties at the substantive stage and could not be obliterated by the court at this stage. The application was amenable to judicial review. (para 75)

(9) Criminal investigative bodies are not above the law and any abuse of powers for collateral purposes is subject to be quashed. The facts set out above demonstrated *mala fide* and a serious abuse of power. If such abuse of power by the Executive bodies is without legal restraint, there would be dictatorship and it becomes the duty of the court to intervene. Given the above, it was clearly demonstrated that the decisions, actions and/or omissions of the respondents were *mala fide* to achieve a collateral or ulterior purpose, that was, for a purpose other than the purpose for which it was professed to have exercised. (paras 70-72)

Case(s) referred to:

Ahmad Azam Mohamad Salleh & Ors v. Jabatan Pembangunan Koperasi Malaysia & Ors [2004] CLJU 2009; [2004] 1 LNS 2009 HC ***(refd)***

Association Of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association [1990] 2 CLJ 734; [1990] 1 CLJ (Rep) 33 SC ***(refd)***

Bandar Utama Development Sdn Bhd & Anor v. Lembaga Lebuhraya Malaysia & Anor [1997] 4 CLJ 725 HC ***(refd)***

City Growth Sdn Bhd & Anor v. The Government Of Malaysia [2005] 7 CLJ 422 HC ***(refd)***

Datuk Kapten (B) Muhammad Suhaimi Yahya & Anor v. Tan Sri Dato Sri' Hj Azam Baki & Ors [2023] CLJU 1150; [2023] 1 LNS 1150 HC ***(refd)***

Dr Amir Hussein Baharuddin v. Universiti Sains Malaysia [1989] CLJU 76; [1989] 1 LNS 76 HC ***(refd)***

Empayar Canggih Sdn Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia & Anor [2018] MLJ (Supp) 16 ***(refd)***

Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor [2021] 2 CLJ 579 FC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(refd)***

Rosli Dahlan v. SPRM, The New Straits Times Press (Malaysia) Bhd & Ors (MTKL Guaman No: S21-325-2009) (Unreported) ***(refd)***

Rosli Dahlan v. SPRM, Utusan Malaysia & Ors (MTKL Guaman No: S21-249-2009) (Unreported) ***(refd)***

Rosli Dahlan v. Star Publications (Malaysia) Bhd & Ors (MTKL Guaman No: S21-23-105-2009) (Unreported) ***(refd)***

Rosli Dahlan v. Tan Sri Abdul Gani Patail, SPRM, PDRM & Ors (MTKL Guaman No: 21 NCvC-84-11-2013) (Unreported) ***(refd)***

Simplex Sdn Bhd lwn. Mohd Samsol Md Muzer & Satu Lagi [2014] CLJU 1278; [2014] 1 LNS 1278 HC ***(refd)***

Suruhanjaya Pencegahan Rasuah Malaysia & Ors v. Latheefa Beebi Koya & Anor [2017] 10 CLJ 1 FC ***(refd)***

Tang Kwor Ham v. Pengurus Danaharta Nasional Bhd & Ors (No 2) [2006] 3 CLJ 448 HC ***(refd)***

WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd [2012] 4 CLJ 478 FC ***(refd)***

Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals [2021] 5 CLJ 581 FC ***(refd)***

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1), 44(1), (4)(c), (6), 44A(4)(a), 50

Federal Constitution, arts. 5, 8, 9, 145(3)

Immigration Act 1959/63, s. 3

Penal Code, s. 420

Rules of Court 2012, O. 53 rr. 2(4), 3

Specific Relief Act 1950, s. 44(1)

For the applicant - Harvinderjit Singh, Harvinder Singh Sidhu, Amiratu Al Amirat & Gan Yu Yu; M/s Vin Law Co

For the Honourable Attorney General - Rahazlan Affandi Abdul Rahim & Nurliana Ismail; SFCs

Reported by Suhainah Wahiduddin

JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

[1] The applicant filed an amended application for leave to commence judicial review proceedings (encl. 9) under O. 53 of the Rules of Court 2012 (ROC) seeking the following reliefs:

(i) an order for *certiorari* to quash the decision and/or action of the first to fifth respondents who have abused their power under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA Act) to falsely link the

applicant to Police Report No. 4381/23 which has no connection whatsoever to the applicant as that was a complaint by Air Asia against i-Serve;

(ii) an order for *certiorari* to quash the decision and/or action of the first to fifth respondents who have abused their power under the AMLA Act to cause the wrongful arrest, detention and remand of the applicant in contravention of ss. 4 and 44 of the AMLA Act and violation of the fundamental rights of the applicant under arts. 5, 8 and 9 of the Federal Constitution (FC);

(iii) an order for *certiorari* to quash the decision and/or action of the first to fifth respondents who have wrongfully issued and/or caused the issuance of the freezing orders under s. 44(1) of the AMLA Act against the following bank accounts;

(a) seven Maybank Berhad and Maybank Islamic Berhad accounts (Maybank accounts);

(b) Permodalan Nasional Berhad account consisting of 12 types of unit trust (ASNB account);

(c) three CIMB Bank Berhad accounts (CIMB accounts);

collectively referred as bank accounts (wrongful freezing order);

(iv) an order for *certiorari* to quash the decision and/or action of the first to fifth respondents who have caused a wrongful exit prohibition to be imposed against the applicant in contravention of s. 44(4)(c) of the AMLA Act and violation of the fundamental rights of the applicant under arts. 5, 8 and 9 of the FC;

(v) an order for *certiorari* to quash the decision and/or action of the sixth respondent who has imposed a wrongful travel ban against the applicant in which the sixth respondent knew or ought to have known that it contravenes s. 44(4)(c) of the AMLA Act and infringes the fundamental rights of the applicant under arts. 5, 8 and 9 of the FC.

(vi) an order for *mandamus* to compel the first to fifth respondents and/or the relevant officers of the Royal Malaysian Police (PDRM) to revoke and/or vary the wrongful freezing order pursuant to s. 44A of the AMLA Act as stated in this application or as this Honourable Court thinks fit;

(vii) in furtherance to para. (vi) above, an order for Maybank Berhad, Maybank Islamic Berhad, Permodalan Nasional Berhad and CIMB Bank Berhad to unfreeze the applicant's bank accounts;

(viii) an order for *mandamus* to compel the first to fifth respondents and/or the relevant officers of the PDRM to revoke the wrongful exit prohibition which is in contravention of s. 44(4)(c) of the AMLA Act as stated in this application or as this Honourable Court thinks fit;

(ix) an order for *mandamus* to compel the sixth respondent and/or the relevant officers of Jabatan Imigresen Malaysia (JIM) to revoke the wrongful travel ban which is in contravention of s. 3 of the Immigration Act 1959/63 (Immigration Act) as a result of the abuse of s. 44(4)(c) of the AMLA Act as stated in this application or as this Honourable Court thinks fit;

(x) an order for *mandamus* to compel the first to fifth respondents and/or the relevant officers of the PDRM to produce the basis for the arrest, detention and remand orders against the applicant for an assessment of the *mala fide* actions of the first to fifth respondents and/or the relevant officers of the PDRM under s. 44(6) of the AMLA Act and to ensure that their actions are in accordance with the purposes of the AMLA Act provisions;

(xi) an order for *mandamus* to compel the first to fifth respondents and/or the relevant officers of the PDRM to produce the basis for the issuance of the wrongful freezing order for an assessment of the *mala fide* actions of the first to fifth respondents and/or the relevant officers of the PDRM pursuant to s. 44(6) of the AMLA Act and to ensure that their actions are in accordance with the purposes of the provisions of the AMLA Act;

(xii) an order for *mandamus* to compel the first to fifth respondents to produce all relevant correspondence, instruments and records in relation to the wrongful exit prohibition and the basis for imposing the wrongful exit prohibition against the applicant;

(xiii) an order for *mandamus* to compel the sixth respondent and/or the relevant officers of the JIM to produce all relevant correspondence, instruments and records in connection with the wrongful travel ban and the basis for imposing the wrongful travel ban against the applicant which the sixth respondent knows or ought to have known is in contravention of s. 44(4)(c) of the AMLA Act;

(xiv) a declaration that the arrest, detention and remand orders are null and void as they are tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of process and abuse of power by the first to fifth respondents and/or the relevant officers of the PDRM;

(xv) a declaration that the applicant's property, including the applicant's bank accounts, can only be deprived of pursuant to the law and a freezing order which has the effect of depriving the applicant of his own property can only be issued with full and strict adherence to the law;

(xvi) a declaration that the issuance of the wrongful freezing orders is null and void as it is tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of process and abuse of power by the first to fifth respondents and/or the relevant officers of the PDRM;

(xvii) a declaration that the actions of the third to fifth respondents in neglecting and/or refusing the revocation and/or variation of the wrongful freezing orders are null and void as they are tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of process and abuse of power;

(xviii) a declaration that the actions of the third to fifth respondents in issuing the wrongful exit prohibition are null and void as they are tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of process and abuse of power;

(xix) a declaration that the actions of the third to fifth respondents in neglecting and/or refusing to revoke the wrongful exit prohibition are null and void as they are tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of legal process and abuse of power;

(xx) a declaration that the action of the sixth respondent in issuing the wrongful travel ban is null and void as it is tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of legal process and abuse of power;

(xxi) a declaration that the action of the sixth respondent in neglecting and/or refusing to revoke the wrongful travel ban is null and void as it is tainted with *ultra vires*, illegality, procedural impropriety, irrationality, *mala fide*, abuse of process and abuse of power;

(xxii) a declaration that the first to fifth respondents and/or the relevant officers of the PDRM must comply with the provisions and intent of the AMLA Act and the laws of the country and act in accordance with the rule of law, procedural fairness and not abuse of powers under the AMLA Act for collateral purpose;

(xxiii) a declaration that the first to fifth respondents and the relevant officers of the PDRM cannot abuse the power and process under the AMLA Act to continue the freezing of the applicant's bank

A accounts and/or to obtain the issuance of a seizure order from the Public Prosecutor under s. 50 of the AMLA Act for nine months, and that the freezing shall cease immediately;

(xxiv) a declaration that the first to fifth respondents and/or the relevant officers of the PDRM cannot abuse the power and process under the AMLA Act/Police Act 1967 (Police Act) to continue the wrongful exit prohibition which shall cease immediately;

(xxv) a declaration that the sixth respondent and/or the relevant officers of the JIM cannot abuse the power and process under the AMLA Act and/or Immigration Act to continue the wrongful travel ban, which shall cease immediately;

(xxvi) a declaration that the first to fifth respondents and/or the relevant officers of the PDRM had abused their power and infringed the fundamental rights of the applicant to obtain medical treatment when they prohibited the applicant from using his CPAP machine on 26 October 2023, which caused the applicant to suffer from recurring acute bronchitis and breathlessness. Therefore, the applicant is entitled for damages to be assessed against the respondents;

E (xxvii) a declaration that the applicant is entitled to a variation of the wrongful freezing orders under s. 44A of the AMLA Act;

(xxviii) a declaration that the first to fifth respondents and the officers of the PDRM must adhere to the provisions and objectives of the AMLA Act/Police Act and the laws of the country, and act in accordance with the rule of law, procedural fairness and not use powers under the AMLA Act/Police Act for collateral purpose;

(xxix) a declaration that the first to fifth respondents must act legally, fairly and justly in the exercise of the powers under the AMLA Act/Police Act and ensure that the fundamental rights of the applicant are protected;

(xxx) a declaration that the applicant, as a Malaysian citizen, has fundamental rights protected under the rule of law and the FC, and is entitled to a legitimate expectation that his fundamental rights will be protected and will not be infringed wrongfully and/or for collateral purposes;

(xxxi) a declaration that the respondents have infringed the constitutional rights of the applicant;

(xxxii) a declaration that the provisions of the FC and all laws of Malaysia must be complied with by the respondents when carrying out investigation or exercising other powers and not for collateral and oppressive purposes;

(xxxiii) a declaration that any decision, action and/or omission of the respondents against the applicant which contravenes the FC and the purpose and spirit of the laws is null and void;

(xxxiv) a declaration that the applicant has a legitimate expectation that he will not be oppressed by the perverse decision, action and/or omission of the respondents;

(xxxv) an order arising from the declaration in the application for damages to be assessed pursuant to s. 44(6) of the AMLA Act against the first to sixth respondents; and

(xxxvi) an order arising from the declaration in the application that the seventh respondent, eighth respondent and ninth respondent are vicariously liable and for damages to be assessed accordingly;

(xxxvii) an interim order that the applicant is entitled to use his Maybank Account 564016631326 for a sum of RM50,000 per month, which is required by the applicant for the payment of debts incurred in good faith and for the provision of reasonable subsistence and other expenses of the applicant, his family and employees as provided under s. 44A(4)(a) of the AMLA Act;

(xxxviii) an interim order that if the applicant requires more than RM50,000 per month for the obligations payments of debts incurred in good faith and for the provision of reasonable subsistence and other expenses of the applicant, his family and employees, the applicant may obtain leave from the court for the required amount;

(xxxix) an interim order that the applicant is entitled to use his ASNB account for a sum of RM1.8 million from the Amanah Saham Wawasan Unit Trust for the payment of zakat to Lembaga Zakat Selangor for the year 2023 pursuant to Inland Revenue Board's (IRB's) policy on Muslim taxpayers which would otherwise be subject to the imposition of a 45% tax penalty by IRB;

(xl) the wrongful exit prohibition is revoked immediately;

(xli) the wrongful travel ban is revoked immediately;

(xlii) that all further directions and orders incidental thereto and necessary be granted;

(xliii) that the cost for and related to this application be borne by the respondents; and

(xliv) any other and further reliefs as the Honourable Court deems appropriate and necessary in the circumstances of this case.

[2] After the hearing, I allowed the applicant's application (encl. 9). The reasons for the decision are set down below.

The Salient Facts

[3] The background facts herein is adopted with and/or without modifications from the amended statement and written submission of the applicant and can be summarised as follows.

[4] The applicant is Rosli bin Dahlan, an advocate and solicitor in Messrs Rosli Dahlan Saravana Partnership (RDS) with an address for service at Level 16, Menara 1 Dutamas, Solaris Dutamas, No. 1, Jalan Dutamas 1, 50480 Kuala Lumpur.

[5] The applicant is a person who has been adversely affected by the decisions, actions and/or omissions of the respondents as public authorities in relation to the exercise of their public duties or functions under O. 53 r. 2(4) of the ROC.

[6] The first respondent is the Inspector General of Police of the PDRM, who is responsible for the direction, control and supervision of all matters relating to the PDRM and its officers under the Police Act 1967 (Police Act). The first respondent has placed the AMLA Division of the PDRM, formerly under the Commercial Crime Investigation Department (JSJK), to the Secretariat of the Inspector General of Police (UKPN).

[7] The second respondent is the director of the JSJK of the PDRM and is the superior officer responsible for matters relating to commercial crime investigations conducted by the PDRM.

[8] The third respondent is the Head of the AMLA of UKPN PDRM and is the superior officer responsible for the actions of the fourth and fifth respondents and the relevant officers of the PDRM.

[9] The fourth respondent is a supervising officer of AMLA UKPN PDRM who is responsible for the investigation, arrest, detention, remand and all actions against the applicant.

[10] The fifth respondent is the investigating officer (IO) of AMLA UKPN PDRM, who is responsible for the investigation, arrest, detention, remand and all actions against the applicant and has issued/executed the freezing order and the exit prohibition against the applicant and has linked the applicant to a predicate offence that has no connection whatsoever to the applicant.

[11] The sixth respondent is the Director General of the JIM, which is responsible for the direction, control and supervision of officers of the JIM as well as all matters relating to the JIM and matters relating to immigration powers under the Immigration Act.

[12] The seventh respondent (PDRM) is the Police Force, the main enforcement agency under the Police Act, which is responsible for the maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.

[13] The eighth respondent (JIM) is the main enforcement agency for Malaysian immigration matters under the Immigration Act. The express and implied power of the JIM cannot be abused to oppress any member of the public.

[14] The ninth respondent is the Government of Malaysia and has a vicarious liability for all wrongful decisions, actions and/or omissions of the first respondent to the eighth respondent not made in good faith.

[15] The applicant is being investigated for an offence under s. 4 of the AMLA Act. To facilitate the investigation, the arrest, detention, remand, issuance of the freezing orders against the applicant's several bank accounts, exit prohibition and travel ban imposed against the applicant were effected by the respondents.

[16] In essence, the applicant is seeking:

(i) orders of *certiorari* challenging the arrest, detention, remand, issuance of the freezing orders against the applicant's several bank accounts, exit prohibition and travel ban imposed against the applicant;

(ii) orders of *mandamus* compelling the respondents to revoke and/or vary the freezing orders and to unfreeze the applicant's bank accounts and to revoke the exit prohibition and travel ban;

(iii) orders of *mandamus* compelling the respondents to produce the basis for the arrest, detention, remand application and issuance of the freezing orders;

(iv) orders of *mandamus* compelling the respondents to produce all relevant correspondence, instruments and records in relation to the exit prohibition and travel ban and the basis for imposing the exit prohibition and travel ban against the applicant; and

(v) subsequent declarations in relation to the above.

[17] On 29 December 2023, the applicant filed this application to seek leave from the court to commence judicial review proceedings against the actions, decisions and/or omissions of the respondents who have abused their powers and the process of law in making a false and wrongful nexus to link the applicant to a case involving other parties in order to oppress, injure, smear the applicant and tarnish the applicant's reputation as a lawyer.

[18] According to the applicant, the decision, actions and/or omissions of the respondents are tainted with *ultra vires*, illegality, procedural impropriety, irrationality, abuse of process, *mala fide*, breach of legitimate expectation, perverse and abuse of power, which resulted in the applicant having to seek reliefs herein.

Grounds Of The Application For Leave

[19] Based on the amended statement, the applicant seeks to challenge the actions, decisions, and/or the omissions of the respondents on the grounds that it was tainted with *ultra vires*, illegality, procedural impropriety, irrationality, abuse of process, *mala fide*, breach of legitimate expectation, perverse and abuse of power.

Background

(i) the applicant acted as the lead counsel for the BERSATU party, its President, Tan Sri Muhyiddin Yassin (TSMY), and its leadership. On 15 August 2023, the KL High Court struck out the four predicate charges and acquitted and discharged TSMY on the grounds that TSMY was charged for an offence unknown in law.

(ii) since then, according to the applicant, this political attack has shifted focus to target the applicant and his firm. The MACC has created a false narrative which has been leaked to the mass media that the applicant/his firm has received bribes/gratification and/or misappropriated 1MDB money which was then laundered through other business activities. This is a malicious allegation and slander. The Sinar Harian newspaper was enlisted for a wider broadcast to the Malay community readership.

(iii) to support the false narrative, on 6 October 2023, the MACC attempted to raid and search the office of RDS, but failed. Sinar Harian conspired to publicise the false story by quoting a professor from UTM to give credibility to the story that the applicant was arrested by the MACC for an investigation involving USD$1.7 billion equivalent to RM7 billion of 1MDB's money.

(iv) Sinar Harian and Dr Mazlan issued a public apology admitting to their defamation as follows:

> Apology to lawyer Rosli Dahlan and Tan Sri Muhyiddin Yassin (TSMY)
>
> 1. On 10 October 2023, Sinar Harian published a political article written by Raiham Md Sanusi titled "PN perlukan panglima perang baru" where Associate Professor Dr Mazlan Ali (Prof Mazlan), a Political Analyst from Universiti Teknologi Malaysia (UTM) had defamed Lawyer Rosli Dahlan and TSMY (Defamatory Article).

2. On 14 October 2023, Sinar Harian had published an admission of fault by Prof Mazlan and the statement by Lawyer Rosli Dahlan on the falsity of the Defamatory Article.

3. We hereby apologise as the Defamatory Article had wrongly, unfairly and seriously injured Lawyer Rosli Dahlan's character, integrity, credit and reputation, which has eroded the confidence of the public in him.

4. We admit that the said Defamatory Article has also brought Lawyer Rosli Dahlan into public scandal, odium and disrepute exposing him to hatred and ridicule and lowered him in the estimation of the public. We acknowledge that the Defamatory Article has been republished and shared, causing it to go viral on various other platforms.

5. We are deeply remorseful and regret our wrongful conduct and the damage caused to Lawyer Rosli Dahlan. Therefore, we hereby make the following statements:

(a) Prof Mazlan's statements regarding Lawyer Rosli Dahlan as well as TSMY are false and defamatory;

(b) TSMY does not face any integrity issues. All predicate charges against him have been struck out and he has been acquitted and discharged by the High Court on 15.8.2023 as he was charged for an offence unknown in law;

(c) Lawyer Rosli Dahlan was never arrested by MACC for any corruption offence;

(d) No RM7 billion or any funds of 1MDB are missing;

(e) All 1 MDB asset recovery funds were paid directly to the Ministry of Finance and not a single sen was paid to Rosli Dahlan's law firm *ie*, RDS;

(f) Hence, it is impossible that any soliciting of 1MDB funds could be done by Lawyer Rosli Dahlan or his law firm;

(g) Prof Mazlan admits that his statements were made recklessly without verification;

(h) Prof Mazlan admits that he had defamed Lawyer Rosli Dahlan and regrets as he had used his position as an Associate Professor in UTM to make false and defamatory statements until it was believed by the public;

(i) We acknowledge with remorse that slander is a grave evil condemned in Islam (Surah Al-Baqarah: 191/217);

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(j) We admit that the said Defamatory Article had tarnished Lawyer Rosli Dahlan's reputation as a Muslim lawyer active in charitable, welfare and dakwah work; and

(k) We admit that Lawyer Rosli Dahlan is a respected professional of utmost integrity. He is an honest and virtuous man.

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6. As such, we deeply apologize for all the hardship and damage that we have caused Lawyer Rosli Dahlan and TSMY. We further state that we deeply regret tarnishing the good name of Lawyer Rosli Dahlan and his reputation as a highly professional and ethical lawyer who strives to maintain a high standard of transparency integrity and virtue.

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7. We also deeply regret the dishonour that we had caused Lawyer Rosli Dahlan and TSMY, their families, RDS and we hereby wholeheartedly denounce the Defamatory Article in his entirety.

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8. We had also removed the said Defamatory Article immediately and we hope that Lawyer Rosli Dahlan and TSMY will forgive us.

We hereby apologize,

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Associate Professor Dr Mazlan AN, Political Analyst of Universiti Teknologi Malaysia

Raiham Mohd Sanusi, Sinar Harian Reporter Sinar Karangkraf Sdn Bhd

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(v) the MACC filed a malicious application against the applicant as the first respondent and RDS as the second respondent in the case of WA-44-102-10/2023 to validate the MACC's false narrative.

(vi) the applicant has filed his first respondent's affidavit in reply, which exposed numerous mistakes, lies and falsehoods by the MACC and revealed an elaborate conspiracy to damage RDS and defame the applicant in order to drag them into public odium and scandal.

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(vii) to avoid the exposures made by the applicant in his affidavit, on 29 November 2023, the MACC withdrew and the High Court dismissed the MACC's application against the applicant and his firm.

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(viii) on 6 December 2023, the applicant issued a press release to expose the MACC's conspiracy, which, to date, cannot be responded to by the MACC:

I

MACC had to withdraw vexatious and fundamentally flawed application, says lawyer Rosli Dahlan

1. On Oct 6, 2023, the Malaysian Anti-Corruption Commission (MACC) attempted to conduct an illegal raid at the law office of Rosli Dahlan Saravana Partnership (RDS). I notified the MACC officers of the illegality of their conduct under s. 46 of their own MACC Act.

2. News of the MACC raid was given wide publicity by the mass media in an orchestrated move to create a false public narrative that RDS was under investigation for corruption against the firm's success in the 1 Malaysia Development Bhd (1MDB) asset recovery efforts.

3. On Oct 7, RDS issued a press statement that the MACC raid was illegal. This received strong support from the Malaysian Bar Council, which also issued a long statement on Oct 13 rebuking the MACC's unprofessional conduct.

4. On Oct 11, the MACC filed an application purportedly to comply with the provisions of s. 46 of the MACC Act. The MACC application was defective in many aspects. The mere filing of this court application itself was an admission that the attempted raid on Oct 6 was illegal. The Bar Council gave notice to appear as amicus curiae (a friend of the court) against the MACC application.

5. The MACC application named me as the first respondent and RDS as the second respondent. Singling me out as the first respondent was malicious, done to smear my reputation by making me the principal suspect of this false corruption investigation.

6. On Oct 27, I filed my affidavit in reply, which exposed numerous errors, inaccuracies and falsehoods by the MACC, exposing an elaborate conspiracy to injure the firm and defame me to bring us into public odium and scandal. I also filed an application to strike out the MACC application.

7. The court directed that my striking out application will be heart first, and for the MACC to file its responses by certain specified dates. The court also set a hearing date of Jan 17, 2024. This must have caused concern to the MACC, as its falsehoods and false investigation used as an instrument of oppression against my firm and I would be exposed in the hearing.

8. On Dec 4, several news portals reported that the MACC had notified the court that it wished to withdraw its application against RDS and I without giving any reasons. This morning (Wednesday, Dec 6), the High Court allowed the withdrawal, and struck out the MACC application. This was after weeks of maligning me publicly.

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9. From the beginning of this episode, I have stated that the MACC's actions against my firm and I were scandalous, frivolous, vexatious, libellous and fundamentally flawed. It is obvious that the MACC has decided to discontinue a proceeding that it had initiated unwittingly to its own detriment, and to the prejudice of the country.

B

10. All these shenanigans against my firm and I must stop. There is still much to be done to recover the losses from the 1MDB scandal. For the sake of the country, the Ministry of Finance and agencies of the task force must behave rationally, and not jeopardise the country's interest in making irresponsible

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statements and allegations that can be capitalised by the counterparties.

11. As a patriot, I remain committed to rendering all assistance needed by the government to resolve the 1MDB fiasco, and erase this shameful episode from the financial history of our country.

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(ix) thereafter, the PDRM pursued the false narrative against RDS and the applicant that the applicant was involved in money laundering.

(x) the PDRM has asked the investors of i-Serve, a company linked to MYAirline, to file a police report to enable the police to conduct

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an investigation.

(xi) a false narrative was then created that the money misappropriated from 1MDB was invested into the i-Serve Group of Companies and MYAirline simply because the applicant also acted as a

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counsel in several cases involving the i-Serve Group of Companies and MYAirline.

(xii) the story of i-Serve and MYAirline was used as a basis of defamation that the applicant was involved in money laundering when an investigative source leaked to the mass media that a

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lawyer was being investigated by the PDRM.

(xiii) on 26 October 2023, the applicant was arrested by the police and the mass media immediately reported on the arrest of a senior lawyer which illustrates a conspiracy to smear the applicant by leaking the arrest to the mass media.

H

(xiv) the arrest was not for the purpose of investigation as no statements were recorded from the applicant during the arrest. While in detention, the applicant, who is a patient of obstructive sleep apnoea, was deprived of the use of his CPAP machine. Consequently, the applicant developed acute bronchitis since then.

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(xv) the next day, on 27 October 2023, the applicant was subjected to two remand proceedings which showed that the basis for the arrest was Police Report No. 4381/23, which was made by Air Asia

against i-Serve regarding several 'credit top up form' transactions in 2018. This matter has no connection whatsoever to the applicant.

(xvi) the applicant is not a shareholder, director, officer or employee of i-Serve and has never been involved in the management and operation of i-Serve. There is no reason to involve nor arrest the applicant based on Police Report No. 4381/23 when the false narrative made by the respondents is the involvement of the applicant in an investment scam.

(xvii) the applicant had acted as counsel for i-Serve in two judicial reviews, WA-25-38-01/2022 and WA-25-372-05/2022, against Bank Negara Malaysia and Attorney General Chambers, where High Court Judge YA Dato' Wan Ahmad Farid had granted leave in both judicial review applications which show there is a *bona fide* and *prima facie* case.

(xviii) it is surprising that the police had acted based on a report by Air Asia, which is a business rival to i-Serve, which has no connection whatsoever to the applicant.

(xix) the Magistrate rejected the remand application for seven days and granted only a one-day remand order, which was to end on the evening of 27 October 2023.

(xx) however, after the remand proceedings, the applicant was not released immediately but was taken to JSJK at Menara KPJ, where a group of reporters had been arranged to take the picture of the applicant to embarrass the applicant. This is *mala fide*.

(xxi) the act of abuse of AMLA UKPN PDRM against the applicant was described in several letters by the applicant to the third and fifth respondents.

(xxii) the purpose of the arrest and detention of the applicant was not for investigation but for other collateral purposes, which constitutes an abuse of the powers of police arrest and investigation.

(xxiii) only on 3 November 2023, which is eight days after the arrest, that the applicant was served with eight freezing orders for Maybank and ASNB accounts when the applicant attended at Menara KPJ for his first statement recording.

(xxiv) at that time, the applicant was not informed that he was prohibited from leaving the country or subject to a travel ban. On 18 November 2023, the applicant and his wife were detained by the officers of JIM at Kompleks Sultan Abu Bakar (Gelang Patah) and prohibited from leaving the country based on a request by the first to fifth respondents.

A (xxv) by a letter dated 21 November 2023 to the third respondent, the applicant highlighted the wrongful exit prohibition, which was made without any notice to the applicant, which has caused detriment and damage to him on 18 November 2023.

B (xxvi) on 23 November 2023, the applicant voluntarily attended JSJK at Menara KPJ for the recording of his second statement. Only then was the applicant served with two more freezing orders for his CIMB accounts and also the exit prohibition order purportedly dated 25 October 2023.

C (xxvii) this exit prohibition order was never notified to the applicant nor stated in the freezing order dated 20 October 2023. It is clear that the wrongful exit prohibition order was a backdated document.

(xxviii) on 7 December 2023, the applicant attended the third statement recording on a date of convenience of the AMLA officer which D clearly demonstrates that the applicant is always cooperative to accommodate the convenience of the AMLA officers and is not a flight risk. Therefore, there is no justification to impose a continued wrongful travel ban on the applicant.

Wrongful Freezing

E **[20]** The freezing of the applicant's bank accounts based on Police Report No. 4381/23 is an illegality, done falsely and solely to damage and injure the applicant.

[21] After the applicant's arrest on 26 October 2023, the applicant F discovered that AMLA UKPN PDRM had frozen the applicant's bank account during the wrongful remand application on 27 October 2023. Until the applicant was examined and his statement recorded eight days later on 3 November 2023, there was no prior notification or service of any freezing order.

G **[22]** The wrongful freezing of the applicant's Maybank, ASNB and CIMB accounts without any notification has caused the applicant to suffer a breach of contract when he could not make the monthly payments by deduction from these accounts. This is still ongoing and has caused the applicant inconvenience as it occurs every month. The applicant became a defaulter H in the bank records.

[23] On 3 November 2023, the applicant attended for the first recording of his statement and only then he was served with eight freezing orders for Maybank and ASNB accounts.

I **[24]** The blanket freezing of all the applicant's bank accounts is unreasonable and disproportionate. It is clear that the blanket freezing was made without investigation as the accounts which were frozen had no

connection whatsoever to the matter investigated under Police Report No. 4381/23. The blanket freezing caused the applicant distress without giving any temporary interim relief.

[25] All the applicant's letters were not replied to by the respondents. The third and fifth respondents' actions in serving the freezing order and exit prohibition order at their whim and fancy are arbitrary, *mala fide* and tainted with procedural impropriety.

[26] The applicant's letters provided the chronology of events and the legal basis showing that the arrest, freezing and travel ban are tainted with illegality and procedural impropriety. The applicant also reminded the respondents that s. 44A of the AMLA Act has clear provisions about the interim reliefs sought but it was ignored by the respondents.

[27] After two months of the wrongful freezing, by a letter dated 18 December 2023, the respondents informed that some of the applicant's bank accounts have been released. This is an admission by the respondents that blanket freezing was made without an investigation.

[28] The revocation of the freezing of several Maybank, ASNB, and CIMB accounts clearly indicates that AMLA UKPN PDRM has realised that these accounts should not have, in the first place, been subjected to a blanket freezing which has caused the applicant grave inconvenience and portrayed him negatively.

[29] It is clear that the respondents had acted in a "freeze first, investigate later" manner against the applicant, although the investigation of Report No. 4381/23 had no connection whatsoever to the applicant. In fact, the respondents have not yet been able to ascertain the predicate offence as announced in the press release that the investigation of predicate offences is ongoing and will take time. As such, it is *mala fide* to link the applicant with a matter that the respondents themselves cannot ascertain. Consequently, the freezing against the applicant's bank accounts is baseless, perverse and tainted with procedural impropriety.

[30] Police Report No. 4381/23 is in respect of 34 credit top-up transactions between Air Asia and i-Serve and the alleged amount involved was RM48.4 million. Therefore, the respondents have no basis to freeze any amount in the applicant's account that exceeded the alleged amount. The respondents have falsely linked the applicant to that police report.

Wrongful Exit Prohibition And Wrong Travel Ban (Wrongful Ban)

[31] The wrongful ban imposed by the respondents against the applicant is null and void and *ultra vires*. An exit prohibition under s. 44(4)(c) of the AMLA Act can only be imposed as part of the freezing order under s. 44(1) of the AMLA Act.

[32] The facts show that the exit prohibition order was wrongfully made and backdated:

(i) on 26 October 2023, the applicant was subjected to the wrongful arrest and wrongful detention;

(ii) on 27 October 2023, the fifth respondent failed to obtain a seven-day remand against the applicant;

(iii) it was only on 3 November 2023 that the applicant was served with eight freezing orders dated 20 October 2023 for the applicant's accounts;

(iv) all the freezing orders which were served on 3 November 2023 do not contain exit prohibition/travel ban;

(v) on 18 November 2023, JIM Gelang Patah barred the applicant from leaving the country upon request of the first to fifth respondents, purportedly on the grounds of an AMLA offence;

(vi) it was only on 23 November 2023 that the applicant was served with the freezing order for the CIMB accounts dated 20 October 2023 as well as the exit prohibition order dated 25 October 2023;

(vii) the CIMB freezing orders, which were served on 23 November 2023, also dated 20 October 2023, yet they were not served on 3 November 2023. This raises suspicion. The CIMB freezing orders also do not contain any exit prohibition/travel ban purportedly made on 25 October 2023;

(viii) an immigration search on the JIM website shows that there was no ban on 23 October 2023;

(ix) therefore, the purported exit prohibition order dated 25 October 2023 is not part of all the freezing orders dated 20 October 2023;

(x) it is clear that an exit prohibition order that is not part of the freezing order is null and void, *ultra vires* and illegal; and

(xi) it is clear that the exit prohibition order was backdated to 25 October 2023 after the respondents failed to obtain a seven-day remand order against the applicant on 27 October 2023 during the remand proceeding. This is why the wrongful exit prohibition was only served on 23 November 2023 to be obfuscated with the CIMB freezing order.

[33] The sixth respondent knew or ought to know that s. 44(4)(c) of the AMLA Act on exit prohibition cannot stand by itself. The prohibition relies on/depends upon a freezing order. It is clear in this regard that all ten freezing orders do not contain such exit prohibition under s. 44(4)(c) of the AMLA Act.

[34] The wrongful exit travel restriction order is not only illegal and *ultra vires* but is also completely groundless and disproportionate based on the following factors:

(i) the applicant has demonstrated his cooperation with the police, such that he is constantly following up directly with them. However, the police behaved otherwise by their disregard to the applicant's initiatives;

(ii) without exception, the applicant has previously always given full cooperation to the authorities, within the legal framework, in all cases and actions;

(iii) the applicant's family, assets, grandchild who requires special attention and his law firm, which has been established as a leading firm in Malaysia employing over 120 workers, are all in Malaysia;

(iv) this case is distinguishable from other cases involving abuse of power, public officers, and public assets. This is a case of defamation by the nation's institutions with a precedent where the MACC had apologised to the applicant in the Open Court (MTKL Guaman No. S21- 23-105/ 2009);

(v) the applicant is committed to the principles of truth and justice with a reputation to "do right and fear no man", including in facing the nation's institutions that have attempted to defame or treat the applicant unfairly and unlawfully (MTKL Guaman No: S21-249-2009 *Rosli Dahlan v. SPRM, Utusan Malaysia & Ors*; MTKL Guaman No: S21-23-105-2009 *Rosli Dahlan v. Star Publications (Malaysia) Bhd & Ors*; MTKL Guaman No: S21-325-2009 *Rosli Dahlan v. SPRM*, *The New Straits Times Press (Malaysia) Bhd & Ors*; MTKL Guaman No. 21 NCvC-84-11-2013 *Rosli Dahlan v. Tan Sri Abdul Gani Patail, SPRM, PDRM & Ors*);

(vi) the applicant's profession as a lawyer, along with his welfare work and advocacy in this region, dictates that the applicant must have freedom of movement not to be prohibited from leaving the country.

[35] Therefore, the above factors demonstrate that the applicant is not a flight risk and there is no reason to impose the wrongful travel ban against the applicant. The imposition of this ban is arbitrary and has no merits.

[36] The ban should not be continued intentionally to injure or punish the applicant. The ban was only to assist the investigation, which is to prevent the OYDS from any flight risk. Once the OYDS has been detected and cooperated with the investigation, there is no basis to continue the ban. In fact, in this regard, the applicant has been and is still fully cooperating whenever requested by AMLA IO. Therefore, the continuation of the wrongful exit prohibition was intentional to injure and persecute the applicant. This is *mala fide* and an abuse of power.

[37] The applicant has and will continue to suffer damage, harm, loss, violation of fundamental rights and infringement of rights and interests resulting from the decision, action and/or omission of the respondents to exercise their public duties and/or functions.

Law For Leave To Commence Judicial Review Proceedings

[38] The governing provision for leave application to commence judicial review proceedings is provided under O. 53 r. 3 of the ROC.

[39] The well-settled test in leave application is found in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [2012] 4 CLJ 478; [2012] 4 MLRA 257; [2012] 4 MLJ 296, where the Federal Court held that the aggrieved party has to satisfy the court that leave application is not thought of as frivolous. And, if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though, *ie*, unless the matter for judicial review is amenable to judicial review, no success may be envisaged.

[40] The principles governing applications for leave to commence judicial review proceedings have also been set out in *Tang Kwor Ham v. Pengurus Danaharta Nasional Bhd & Ors (No 2)* [2006] 3 CLJ 448; [2006] 1 MLRH 507; [2006] 5 MLJ 159 where Low Hop Bing J (as he then was) held:

> [10] ... the High Court should not go into the merits of the case at leave stage. Its role is only to see if the application for leave is frivolous ... So too will the court be entitled to refuse leave if it a case where the subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable.

[41] In *Association Of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1990] 2 CLJ 734; [1990] 1 CLJ (Rep) 33; [1990] 1 MLRA 324; [1990] 3 MLJ 228; [1990] 1 MELR 128; [1990] 2 ILR 308, the then Supreme Court held that the guiding principle in granting an order of *certiorari* is that the applicants must show *prima facie* that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application. The then Supreme Court stated the followings:

> At the outset of the hearing of the appeal before us we indicated to the parties that we would hear submissions on the issue of leave only. After giving due consideration to the evidence in this case and the submissions advanced by the parties we were of the view that leave to apply for an order of *certiorari* ought to have been given. In his grounds of judgment the learned judicial commissioner had gone further than the leave stage and embarked on substantial issues on merit. We did not think that this was the right approach when the application for leave to apply for an order of *certiorari* is made. *The guiding principles ought to be that the applicants must show prima facie that the application is not frivolous or vexatious and that there is*

some substance in the grounds supporting the application. On the evidence in this case we found that the appellants had *prima facie* an arguable case for the granting of the relief they were seeking. Their application was not frivolous or vexatious. There were grounds to consider the allegations made by the appellants and which could only be properly heard and determined on the substantive application for an order of *certiorari* after leave has been granted.

(emphasis added)

[42] In the case of *Bandar Utama Development Sdn Bhd & Anor v. Lembaga Lebuhraya Malaysia & Anor* [1997] 4 CLJ 725; [1997] 3 MLRH 293; [1998] 1 MLJ 224, at 225, Visu Sinnadurai J (as he then was) held that:

... The court, in exercising its discretion that an application for leave be granted, must be convinced by the applicants that *prima facie* the application is genuine and there is some substance in the grounds supporting the application. The test's threshold is very low; a *prima facie* case of reasonable suspicion, an arguable case must be shown, not a *prima facie* case. *Additionally, an application will fail if it is frivolous, vexatious, misconceived, made by busybodies with misguided or trivial complaints of administrative errors, groundless, where there are more appropriate alternative remedies, and where the application for judicial review is inappropriate*.

(emphasis added)

[43] In *Dr Amir Hussein Baharuddin v. Universiti Sains Malaysia* [1989] CLJU 76; [1989] 1 LNS 76; [1989] 4 MLRH 408; [1989] 3 MLJ 298 at 298, Judge Edgar Joseph Jr (as he then was) held that:

... the test in an application for leave is whether the applicant has an arguable case for review, a sufficient interest and whether there has been any undue delay.

[44] Based on the above cases, the applicant in the instant application has to satisfy the test or requirement propounded in order to secure leave to commence the judicial review proceedings. At this stage, this court need not go into the merits of the case, but only to see if the subject matter is amenable to judicial review or not; whether the application for leave is frivolous and whether an arguable case of granting the reliefs sought at the substantive hearing may be the resultant outcome.

Preliminary Objection (PO)

[45] At the outset of the hearing, learned Senior Federal Counsel (SFC) raised a PO. The PO was premised on the following grounds:

(i) the respondent's actions and/or decision were not amenable to judicial review.

(a) the respondents submit that the respondents' actions challenged by the applicant were acts done by the respondents in the exercise of functions/powers in relation to a criminal investigation (part of the investigation process) for a suspected offence under s. 4(1) of the AMLA Act;

A (b) the respondents' decisions were not administrative decisions that were amenable to judicial review but decisions in relation to criminal investigation. Such an exercise of functions/power in the course of criminal investigation was not open to judicial review under O. 53 of the ROC;

B (c) to hold otherwise would expose the criminal investigative processes of all law enforcement agencies in the country to constant judicial review, which surely could not have been the intention of Parliament;

C (d) if decisions made and actions taken in the process of criminal investigation pursuant to the power given by law, such as the impugned arrest, detention, remand, issuance of freezing orders, exit prohibition and travel ban in this case are amenable to judicial review, then criminal investigative machinery may not function smoothly and efficiently, as it should be; and

D (e) to support its contention, the respondents cited the following case laws amongst others:

(1) *Simplex Sdn Bhd lwn. Mohd Samsol Md Muzer & Satu Lagi* [2014] CLJU 1278; [2014] 1 LNS 1278; [2014] MLRHU 883; [2015] E 9 MLJ 78;

(2) *City Growth Sdn Bhd & Anor v. The Government Of Malaysia* [2005] 7 CLJ 422; [2005] 2 MLRH 685; [2006] 1 MLJ 581;

(3) *Ahmad Azam Mohamad Salleh & Ors v. Jabatan Pembangunan* F *Koperasi Malaysia & Ors* [2004] CLJU 2009; [2004] 1 LNS 2009; [2004] 6 MLRH 212; [2004] 4 MLJ 86;

(4) *Empayar Canggih Sdn Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri Dan Hal Ehwal Pengguna Malaysia & Anor* [2018] MLJ (Supp) 16; [2015] G 1 MLRA 341; [2015] 1 AMR 540;

(5) *Suruhanjaya Pencegahan Rasuah Malaysia & Ors v. Latheefa Beebi Koya & Anor* [2017] 10 CLJ 1; [2017] 5 MLRA 89.

(ii) abuse of the court process where there existed a collateral purpose of H interfering with the criminal investigation conducted against the applicant.

(a) the respondents submit that the purpose and effect of the applicant's judicial review is to pre-empt, impede and interfere with the ongoing criminal investigation against the applicant.

I (b) determining the reliefs claimed by the applicant would lead or potentially lead the court to pre-empt, impede and/or interfere with the ongoing criminal investigations against the applicant. This

would lead to floodgate litigation where parties would attempt to bypass the criminal law and seek the determination of the civil courts to interpret the criminal laws and procedures.

(iii) wrongful mode of action/writ action/private law remedy.

(a) the respondents submit that based on the applicant's affidavits, it has been repeatedly and substantially averred by the applicant that his arrest, detention, remand and further consequential respondents' actions were, among others, tainted with bad faith (*mala fide*), false basis/accusation, conspiracy, defamation, collateral purposes, abuse of the legal process and abuse of power with the aim of persecuting him for something false, irrational and oppressive against him.

(b) the applicant should have challenged the respondents' actions in relation to the arrest, detention, remand, issuance of the freezing orders against the applicant's bank accounts, exit prohibition and travel ban by way of a civil writ action and not by way of judicial review.

(iv) matters have become academic and hypothetical.

(a) the respondents contend that based on the applicant's additional affidavit, it was deposed that:

(1) on 18 December 2023, the fourth respondent revoked several freezing of the applicant's Maybank, CIMB and ASNB account;

(2) on 2 January 2024, he received a letter dated 26 December 2023 (exh. "RD-32") from the fifth respondent stating that the travel ban against him that would expire on 22 January 2025 would be revoked immediately on that day;

(3) on 18 January 2024, he was served with several revocation orders of freezing of accounts dated 15 January 2024 and 17 January 2024 for his CIMB and Maybank accounts (exhs. "RD-33A", "RD-33B" and "RD-33C") (para. 9.2);

(4) on 18 January 2024, he was served with a letter dated 15 January 2024, along with four seizure orders under s. 50 of the AMLA Act dated 12 January 2024 against four funds in his ASNB account. The letter states that "the seizure only involves the number of units while the account is released and the remaining balance can be transacted as usual" (exh. "RD-34") (para. 9.3).

(b) the exit prohibition/travel ban against the applicant had then been revoked by the respondents, rendering the challenge against the imposition of such restriction purely academic and hypothetical.

A (c) there is no more living issue left before this court to decide on the reliefs of *certiorari*, *mandamus* and declaration concerning exit prohibition and travel ban. The applicant had by then no real interest in such reliefs sought for *via* this instant judicial review application.

B (d) any views by this court as to the validity or rationality or otherwise of the exit prohibition and travel ban would be wholly academic and exercise in futility in the circumstances of this case.

(v) the applicant failed to cumulatively fulfill the prerequisites of *mandamus* under s. 44(1) of the Specific Relief Act 1950 (SRA).

C (a) the respondents submit that *mandamus* cannot be issued against the respondents, directing them to comply with the particulars of *mandamus* as prayed for by the applicant since the details as embodied in the *mandamus* sought for concern about the D discretionary powers/functions of the respondents and have no relation at all to any statutory duty of the respondents. It is stressed that *mandamus* is aimed at compelling the performance of statutory duty of a public nature and not of the exercise of power.

(b) there is no statutory legal duty under the AMLA Act for the E respondents to produce the basis for the arrest, detention, remand application and issuance of the freezing orders. Likewise, no such statutory legal duty of the respondents to produce all relevant correspondence, instruments and records in relation to the exit prohibition and travel ban and the basis for imposing the exit F prohibition and travel ban against the applicant.

(c) such orders of *mandamus* cannot be granted due to the absence of legal duty to be performed by the respondent for the reliefs sought by the applicant in this instant application.

G **The Decision Of The Court**

[46] As stated earlier, the threshold for leave application is low. Applying the test in the cases of *WRP Asia Pacific Sdn Bhd* (*supra*), *Tang Kwor Ham* (*supra*) and *Association Of Bank Officers* (*supra*), the applicant must show that the application is amenable to judicial review, he has an arguable case and H reliefs sought for are not frivolous or vexatious at this stage for leave to be granted.

[47] As stated above, the applicant seeks to review the following decisions, actions and/or omissions of the respondents:

I (i) the illegality and bad faith of the wrongful arrest and remand;

(ii) the illegality and bad faith of the wrongful freezing orders;

(iii) the illegality and bad faith of the wrongful exit prohibition; and

(iv) the illegality and bad faith of the wrongful travel ban.

[48] On this issue, I have discussed in my recent decision in the case of *Datuk Kapten (B) Muhammad Suhaimi Yahya & Anor v. Tan Sri Dato Sri' Hj Azam Baki & Ors* [2023] CLJU 1150; [2023] 1 LNS 1150; [2023] 5 MLRH 432; [2023] MLJU 1298; [2023] AMEJ 1175, where the applicant sought leave for judicial review proceeding to challenge the decision, action and/or omission of the SPRM for the impugned freezing order against BERSATU's bank account and imposition of travel ban on TSMY. I have decided that:

> [49] The learned SFC submitted that the exercises of function or power in relation to criminal investigation processes are not amenable to judicial review. The learned SFC referred to the *Empayar Canggih Sdn Bhd v. Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia & Anor* [2018] Supp MLJ 16; [2015] 1 MLRA 341; [2015] 1 AMR 540 where the Federal Court made the following observation:
>
> [22] Section 39 of Act 606 provides for search and seizure without warrant. It provides ...
>
> [23] The effect of the section is that if there is reasonable cause to believe that an offence under Act 606 is being or has been committed on any premises, but the assistant controller has reasonable grounds for believing that by reason of the delay in obtaining a search warrant under s. 38, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the assistant controller may enter the premises and exercise all of the powers referred to in s. 38, including the power of seizure under s. 38(2).
>
> [24] *Thus it is clear to us that the seizure challenged by the appellant in its judicial review application was an act done by the respondents' officers in the exercise of a function in relation to a criminal investigation for an offence under Act 606. In our view such an exercise of power in the course of a criminal investigation is not open to review under O 53 of the RHC. To hold otherwise would, to our mind, be exposing the criminal investigative process of all law enforcement agencies in the country to constant judicial review which surely could not have been the intention of parliament ...*
>
> [50] *Albeit* the argument of the learned SFC by citing the above relevant passage in *Empayar Canggih* (*supra*) is seemingly a convincing argument, the court recognises that there is a constant progressive development in judicial review in Malaysia. In fact, it is arguable as to whether criminal investigation or prosecution of a serving Superior Court Judge by the MACC is amenable to judicial review.

51. In *Haris Fathillah Mohamed Ibrahim & Ors v. Tan Sri Dato' Sri Hj Azam Baki & Ors* [2023] 2 MLJ 296; [2023] 3 CLJ 653; [2023] 3 MLRA 266, there was an originating summons filed at the High Court to seek declaratory relief that:

(a) criminal investigation bodies, including the MACC, are not entitled or are otherwise precluded from investigating serving judges of the High Court, the Court of Appeal and the Federal Court save when they are suspended pursuant to art. 125(5), FC or removed pursuant to art. 125(3); and/or

(b) the Public Prosecutor is not empowered to institute or conduct any proceedings for an offence against serving judges of the High Court, Court of Appeal and the Federal Court.

52. The originating summons was stayed pending a disposal constitutional reference at the Federal Court. After hearing the parties, the Federal Court remitted the matter to the High Court for disposal of the substance of the originating summons. Tengku Maimun CJ held that:

> [89] In conclusion, *we reiterate that serving Superior Court Judges are not immune from criminal investigations or prosecution. They need not be suspended or removed before they can be investigated or prosecuted. However, because they are serving judges, criminal investigations against them are subject to a higher standard*, in light of the doctrine of judicial independence. If an investigation or prosecution against a serving judge is found to have been commenced for collateral purposes, the courts are entitled, when reviewing them, to set them aside or pass any other remedy that counts as suitably moulded relief. As always, the remedy depends on the facts and circumstances of the case.
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> ...
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> [90] *We remit this matter to the High Court so that it can dispose of the substance of this suit, the OS, in accordance with the judgment of this court or otherwise the law under s. 85 of the CJA ...*

53. Besides *Haris Fathillah* (*supra*), in the cases of *Peguam Negara Malaysia v. Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) And Another Appeal* [2019] 4 CLJ 561; [2019] 3 MLRA 183 and *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 6 CLJ 199; [2021] 5 MLRA 1; [2021] 5 MLJ 209, the Court could also observe progressive development of judicial review and took cognizance that even the power of the Attorney General exercisable at his discretion to institute, conduct or discontinue any proceedings for an offence under Article 145(3) of the FC is amenable to judicial review in appropriate circumstances.

54. Mohd Zawawi Salleh FCJ (as he then was) in *Chin Chee Kow* (*supra*) held that:

> [76] Singapore's courts have repeatedly affirmed that all powers are subject to legal limits. In *Chng Suan Tze v. Minister for Home Affairs* [1988] 2 SLR(R) 525, [1988] SGCA 16, para. 86; *Tan Seet Eng*

v. Attorney-General [2016] 1 SLR 779, [2015] SGCA 59, paras 1-2.), the courts held thus: "under the law, the AG's discretionary power is not absolute and he must act according to law, as his prosecutorial power is subject to legal limits. Prosecutorial discretion cannot be exercised in bad faith, or in a manner contrary to the quality guaranteed under art. 12 of the Constitution" (see *Law Society of Singapore v. Tan Guat Neo Phyllis* [2008] 2 SLR(R) 49, [2007] SGHC 207, para. 148).

[77] Reverting back to our present appeals, we have carefully considered the judgment of the Court of Appeal in Appeal No. 58 while keeping in mind the principles of law on the subject as propounded by the courts in other jurisdiction. *We found there was no flaw in its reasoning in holding that the power of the AG to give or refuse consent under s. 9(1) of Act 359 is amenable to judicial review*. We are in total agreement with the Court of Appeal's reasoning as alluded to earlier in para. [18].

55. The decision of *Chin Chee Kow* (*supra*) which held that the power of the Attorney General under Article 145(3) of the FC is amenable to judicial review in appropriate circumstances was approved in the subsequent Federal Court case of *Sundra Rajoo* (*supra*) where Tengku Maimun CJ held that:

[97] Deference does not however translate to complete surrender. Ours is a system built on constitutional supremacy where accountability, separation of powers and rule of law take centre stage. Much headway has been made in our constitutional jurisprudence to curate the fine balance between policy considerations on the one side, and the adjudication and supervision of the legality of State action by the judicial branch – on the other. *This gradual shift from unfettered discretion to restricted supervision is apparent from the judgment of this court in Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561; [2019] 3 MLJ 443 ("Chin Chee Kow").*

...

[107] It appears that the High Court based its decision to review the second respondent's discretion in this case on *the decision of this court in Chin Chee Kow. The ratio of the judgment is disclosed in the following dictum of Mohd Zawawi Salleh FCJ*:

> [83] *We hasten to add that unfettered discretion is contradictory to the rule of law. Therefore, the AG's power to give consent or otherwise under s. 9(1) of Act 359 is not absolute and is subject to legal limits.*

....

[109] That said, we accept that at stake in all review cases is the notion that the courts must be cautious not to run awry of the fine dividing line of the doctrine of separation of powers. *In this regard, while the AG/PP's powers are reviewable, the AG/PP's discretion under art. 145(3) of the FC, as a matter of policy, remains subject to a higher*

threshold of scrutiny. The following passage of Chan Sek Keong CJ in *Ramalingam Ravinthran v. Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") offers some guidance:

> 44. In view of the co-equal status of the two aforesaid constitutional powers, the separation of powers doctrine requires the courts not to interfere with the exercise of the prosecutorial discretion unless it has been exercised unlawfully. The prosecutorial power is part of the executive power, although, under existing constitutional practice, it is independently exercised by the Attorney-General as the Public Prosecutor. *In view of his high office, the courts should proceed on the basis that when the Attorney-General initiates a prosecution against an offender (regardless of whether he was acting alone or in concert with other offenders), the Attorney-General does so in accordance with the law. In other words, the courts should presume that the Attorney-General's prosecutorial decisions are constitutional or lawful until they are shown to be otherwise ...*
>
> [110] *Thus, the Singapore Courts too have departed from the notion that AG/PP's powers are unreviewable but they had taken the stance that the review process be subject to higher standards ...*

56. In short, with the recent Federal Court's decisions in *Chin Chee Kow* (*supra*) and *Sundra Rajoo* (*supra*) which held that even the power of the Attorney General under Article 145(3) of the FC is amenable to judicial review in appropriate circumstances, there is no reason why freezing order imposed by the MACC under s. 44 and/or s. 50 of AMLA cannot be subjected to judicial review in appropriate circumstances. Therefore, this court is of the view that the legality of an impugned freezing order is not frivolous or vexatious. There is a triable issue that warrants hearing at the substantive motion.

(iii) Travel Ban

57. Besides challenging the legality of the impugned freezing order, the applicants also challenged the legality of the travel ban imposed against the second applicant.

58. It is to be noted that after the applicants filed this application for leave to commence a judicial review, the travel ban was subsequently lifted.

59. The learned SFC argued that presently a travel ban is still being imposed by the 19th respondent because the Kuala Lumpur Sessions Court has ordered the passport of the second applicant to be surrendered to the Court, it was not because of restrictions or ban imposed by the MACC or the Immigration Department of Malaysia.

60. On the contrary, the applicants submitted that there are factual and evidential issues in relation to the upliftment and reimposition of the travel ban. In other words, the legality of the impugned travel ban imposed at the material time was an issue as it infringed the second respondent's constitutional rights under Articles 5, 8, 9 and 10 of the FC.

61. The Court is aware that in *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579; [2021] 3 MLRA 1; [2021] 1 MLJ 750, a similar issue in relation to the legality of a travel ban which was subsequently lifted was raised. In *Maria Chin* (*supra*), the Appellant was banned from traveling to South Korea by the Immigration Department of Malaysia at the Kuala Lumpur International Airport. Two days after the incident, the travel ban was lifted. The Appellant/applicant filed an application for judicial review seeking *inter alia* a declaration that the travel ban is a breach of Article 5(1), Article 8 and/or Article 10(1)(a) of the FC.

62. The Federal Court held as follows:

> [17] *The general principles applicable to a declaration based on public interest to overcome what is otherwise an academic exercise are summarised in Rolls-Royce Plc v. Unite the Union [2010] ICR 1 as modified in Milebush Properties Ltd v. Tameside MBC [2011] EWCA Civ 270 …*
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> ...
>
> [394] Further, this court in Bar Council accepted the observations of Lord Slynn of Hadley in *R v. Secretary of State for the Home Department ex p Salem* [1999] 1 AC 450 ('*Salem*') that *courts should not usually hear 'academic' cases 'unless there is a good reason in the public interest for doing so'* (*Salem*, p. 457). This, in the court's words, is the 'Salem exception' to the rule disfavouring the hearing of academic cases.
>
> ...
>
> Conclusion
>
> [612] Based on the foregoing, it should be apparent that the decision of the High Court cannot stand as it was decided principally on the decision of Loh Wai Kong - FC. *The decision of the Court of Appeal also cannot stand for we have already held that the present appeal is not academic.*

63. Similarly, the Federal Court in *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581; [2021] 4 MLRA 518; [2021] 3 MLJ 759 held that an application for a writ of *habeas corpus* is not academic merely because of the wrong order of detention cited or supervening events, or even if the detainees have been released on bail. The relevant excerpts of the judgment are as follows:

> [203] … *The ratio in Ezam's case is that detentions must be looked at as a whole. If the detention is found to be lawful, then the matter is not academic. Applying the ratio in Ezam to these appeals, as the learned JC found that the appellants' detention was lawful, I conclude that the present appeals are not academic.*
>
> ...
>
> [229] The judgments in *Kanyu Sayal* and *Theresa Lim* coherently flow with the line of reasoning adopted by this court in *Ezam*. The foregoing authorities establish the proposition that when a person is detained, the legality of his detention is to be adjudicated by

A reference to the date the application for a writ of *habeas corpus* is filed. The detaining authorities are not permitted to "shift the goal post" – so to speak – by alleging that further or subsequent detentions have been made with a view to render the argument on the impugned detention academic. *In other words, the detaining authority cannot rely on subsequent detentions to circumvent the illegality of*
B *the initial remand or detention under challenge at the time of filing of the writ of habeas corpus. Accepting such an argument would amount to condoning an abuse of the process of the court and would unduly narrow the interpretation of art. 5(2)* – a safeguard of a fundamental liberty – against settled constitutional cannons of interpretation. It would
C also render the safeguard in art. 5(2) illusory.

...

[232] *It follows that the respondents' preliminary objection that the present application for habeas corpus is academic, is bereft of any merit*. The preliminary objection is accordingly dismissed.

D ...

Conclusion

[328] In light of art. 5(2) of the FC and the decision of this court in *Ezam* (*supra*), *the present appeals are not academic* ...

E 64. In the instant application before the Court, there was no reason given by respondents for the imposition of the travel ban against the second applicant at the material time. On *prima facie*, there is no positive provision of law setting out clearly and unequivocally that any of the respondents, especially the 19th respondent being the Immigration Department of Malaysia, has the right to impose the travel ban on the second applicant.

F 65. Subsequent upliftment of the travel ban is not academic *per se* as the Court has to look into the travel ban as a whole and not in isolation. Besides, the travel ban also has an element of public interest to demand the Court to look into the matter substantively as the second applicant being the preceding Prime Minister of Malaysia has a certain standing in
G the country.

66. In short, the issue of the legality of the impugned travel ban is not frivolous or vexatious in the instant application. It touches upon fundamental liberty enshrined in the FC which also warrants substantive hearing by this Court.

H **[49]** Coming back to the facts in the present case and having perused the cause papers, I find that the PDRM orchestrated a series of events in abuse of their powers as a law enforcement agency to subject the applicant to a series of *mala fide* actions based on false nexus and malicious slander.

[50] The first to fifth respondents' actions and/or decisions as officers of
I the PDRM to falsely and maliciously link the applicant to a case that has no connection whatsoever to the applicant is an abuse of power, which also leads to the subsequent wrongful arrest and remand, and the issuance of the wrongful freezing orders, wrongful exit prohibition and wrongful travel ban.

The actions and/or decision-making process are based on the exercise of power by the PDRM and its officers under the AMLA Act, which are amenable to judicial review.

[51] The first to fifth respondents acted in concert to falsely link the applicant to Police Report No. 4381/23 by Air Asia Berhad against i-Serve Technology and Vacations Sdn Bhd based on an incident in 2018, which was classified as fraud under s. 420 of the Penal Code. The applicant is not connected in any way whatsoever to that matter. The applicant is not a shareholder/director/officer/employee of i-Serve and has no connection/involvement in the management or operation of i-Serve.

[52] Based on that police report, which had no connection whatsoever to the applicant, the applicant was wrongfully arrested and remanded; his bank accounts were wrongfully frozen; and he was subjected to a wrongful travel ban.

[53] On 27 October 2023, after the remand proceedings had ended, the applicant was not released immediately. Instead, the applicant was taken to JSJK at Menara KPJ, where a group of reporters were waiting to photograph the applicant. This was clearly orchestrated to embarrass the applicant being photographed in handcuffs and an orange uniform, chained with other police prisoners. The applicant was not examined nor any statement was recorded from him on that day. Quite clearly, the arrest and remand were not for investigative purposes. This malicious act justifies a review by this Honourable Court.

[54] The wrongful arrest and wrongful detention were tainted with illegality as there was no basis to allege any offences have been committed by the applicant when the Police Report No. 4381/23 is in fact, a business dispute between Air Asia and i-Serve. The applicant is not a shareholder/director/officer/employee of i-Serve and has no connection/involvement in the management or operation of i-Serve.

[55] The first time the applicant was investigated (examined and statement recorded) was eight days later on 3 November 2023, when the applicant was present at Menara KPJ for the recording of his first statement. He was served with eight freezing orders dated 20 October 2023 for his Maybank and ASNB accounts (exhs. "RD-18A" and "RD-18B"). The freezing orders did not contain any travel ban.

[56] On 18 November 2023, the applicant was prohibited from leaving the country for Singapore. The applicant incurred loss and damages due to the travel ban.

[57] On 23 November 2023, the applicant was present at Menara KPJ for the recording of the second statement. Only then the applicant was served with two freezing orders dated 20 October 2023 for his CIMB accounts (exh. "RD-20A"). Furthermore, the fifth respondent acted arbitrarily by

A serving the freezing orders of the CIMB accounts on 23 November 2023, even though the order was dated 20 October 2023. It must also be noted that the freezing orders of the applicant's Maybank and ASNB accounts were served earlier on 3 November 2023. This shows bad faith.

B **[58]** The actions of the first to fifth respondents to act in a "freeze first, investigate later" manner contravenes the purpose of Parliament enacting s. 44 of the AMLA Act, which is to ensure that enforcement agencies, including PDRM, can only issue a freezing order where there are reasonable grounds to suspect that an offence under s. 4(1) of the AMLA Act has been committed or that the property in question is the result of unlawful activity.

C **[59]** The wrongful freezing orders are fundamentally flawed as it did not fulfill the requirements under s. 44 of the AMLA Act:

(i) an investigation with regard to an unlawful activity has commenced against that person; and

D (ii) the enforcement agency has reasonable grounds to suspect that an offence under sub-s. 4(1) of the AMLA Act or a terrorism financing offence has been or is being or is about to be committed by that person or the property is the proceeds of an unlawful activity or the instrumentalities of an offence.

E **[60]** In other words, s. 44 of the AMLA Act requires the investigating officer to be satisfied with the target of the investigation, the actual offence being investigated and whether the offence has taken place or is about to take place.

F **[61]** It is to be noted that the wrongful exit prohibition order was dated 25 October 2023, whereas all the wrongful freezing orders were dated 20 October 2023. This is so despite the fact that the wrongful exit prohibition order was purportedly issued under s. 44(4)(c) of the AMLA Act, which provides as follows:

G (4) *An order made under subsection (1) may direct* that the person named or described in the order shall:

(a) be restrained, whether by himself or by his nominees, relatives, employees or agents, from selling, disposing of, charging, pledging, transferring or otherwise dealing with or dissipating his property;

H (b) not remove from or send out of Malaysia any of his money or property; and

(c) *not leave or be permitted to leave Malaysia and shall surrender any travel documents to the Director-General of Immigration within one week of the service of the order.*

I (emphasis added)

[62] The sixth respondent knew or ought to have known that the wrongful travel ban was *ultra vires* s. 44 of the AMLA Act. The wrongful travel ban was purportedly made on 25 October 2023, whereas the freezing order was

made on 20 October 2023. This contravenes s. 44(4)(c) of the AMLA Act whereby the exit prohibition order cannot stand independently of the freezing order. A

[63] Further, I find that the wrongful freezing orders would need to be determined as it has led to a seizure order under s. 50 of the AMLA Act. Any subsequent order flowing from the wrongful freezing orders would be void. This is not academic. B

[64] Similarly, the wrongful exit prohibition and wrongful travel ban is not academic. There are factual and evidential issues as to the imposition and the upliftment of the wrongful exit prohibition and/or the wrongful travel ban. These are live issues and not academic. (See: *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579; [2021] 3 MLRA 1; [2021] 1 MLJ 750). C

[65] Even if the wrongful travel ban has now been uplifted, the legality and/or illegality of the wrongful travel ban is a live issue to be determined by this court. D

(See: *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581; [2021] 4 MLRA 518; [2021] 3 MLJ 759).

[66] The Federal Court in *Chin Chee Kow* (*supra*) has observed the progressive development of judicial review and took cognisance that even the AG's exercise of the prerogative power to institute, conduct or discontinue any proceedings for an offence under art. 145(3) of the FC is amenable to judicial review in appropriate circumstances. E

[67] Furthermore, the Federal Court in *Latheefa Beebi Koya* (*supra*) recognises the justiciability of decisions, actions and/or omissions of public authority in the course of *mala fide* criminal investigative process, which has been expressly pleaded by the applicant and is one of the foundations of this judicial review application. F

[68] The Federal Court in *Latheefa Beebi Koya* (*supra*) had stated as follows: G

> [42] The general conclusion that can be drawn from the cases referred to above is that *the actions or decisions of a public authority in exercise of its powers in the course of criminal investigation or enquiry is not open to judicial review*. Therefore, the answer to the question posed to this court is that *the exercise of legitimate power*, namely, the issuance of the notice pursuant to s. 30(1)(a) of the Act by the first appellant through the third appellant is *not amenable to judicial review*. The notice was issued in order to assist the appellants in the investigation of a corruption offence under s. 16(b) of the Act. *To hold otherwise, would expose the criminal investigative processes of all law enforcement agencies to constant judicial review. On the facts of this case, the respondents failed to established that the notice was issued mala fide or in bad faith*. H I
>
> (emphasis added)

[69] The qualification of *mala fide* is also specifically recognised in s. 44(6) of the AMLA Act, which reads as follows:

> (6) An enforcement agency shall not be liable for any damages or cost arising directly or indirectly from the making of an order under this section **unless it can be proved that the order under subsection (1) was not made in good faith**.
>
> (emphasis added)

[70] The Federal Court, in its recent decision of *Haris Fathillah Mohamed Ibrahim & Ors* (*supra*), has also made it clear that criminal investigative bodies are not above the law and any abuse of powers for collateral purposes is subject to be quashed. This case directly addressed the MACC's powers of investigation. Tengku Maimun CJ issued a reminder as follows:

> [69] *Any abuse of those powers such as using them for collateral purposes* not only constitutes possible offences such as abuse of power or obstruction of justice, but also constitutes actionable complaints through the courts' *statutory review powers*. An apt example of this is the *quashing* of criminal charges and proceedings initiated by the public prosecutor in *Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209.
>
> [70] *Criminal investigative bodies, whenever they investigate anyone, are bound to comply with the law*. The onus on them to comply with the law is even more onerous when it concerns a serving Superior Court judge because not only are they bound by the said Judge's guarantees of fundamental rights under the FC, due process of the law governing their powers and criminal procedure, but also the prohibition against judicial interference.
>
> ...
>
> [76] ... *If, for instance, it can be demonstrated that an investigation was conducted for a collateral purpose, then the ill-intended investigation is liable to be completely set aside when judicially reviewed*. This concept is merely a natural extension of *Sundra Rajoo* where this court has held that even the public prosecutor's powers are reviewable in the rarest of rare cases.
>
> (emphasis added)

[71] The facts set out above have demonstrated *mala fide* and a serious abuse of power. If such abuse of power by the Executive bodies is without legal restraint, there would be dictatorship and it becomes the duty of the courts to intervene.

(See: *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1978] 1 MLRA 132; [1979] 1 MLJ 135).

[72] Given the above, it is clearly been demonstrated that the decisions, actions and/or omissions of the respondents are *mala fide* to achieve a collateral or ulterior purpose, that is, for a purpose other than the purpose for which it was professed to have exercised.

Interim Order

[73] At the time of filing of this application, the applicant had sought the following interim reliefs:

(i) an interim order that the applicant is entitled to use his Maybank Account xxx326 for a sum of RM50,000 per month which is required by the applicant for the payment of debts incurred in good faith and for the provision of reasonable subsistence and other expenses of the applicant, his family and employees as provided under s. 44A(4)(a) of the AMLA Act;

(ii) an interim order that if the applicant requires more than RM50,000 per month for the obligations payments of debts incurred in good faith and for the provision of reasonable subsistence and other expenses of the applicant, his family and employees, the applicant may obtain leave from the court for the required amount;

(iii) an interim order that the applicant is entitled to use his ASNB Account for a sum of RM1.8 million from the Amanah Saham Wawasan Unit Trust for the payment of zakat to Lembaga Zakat Selangor for the year 2023 pursuant to IRB's policy on Muslim taxpayers which would otherwise be subject to the imposition of a 45% tax penalty by IRB;

(iv) the wrongful exit prohibition is revoked immediately;

(v) the wrongful travel ban is revoked immediately.

[74] After the filing of this application, the third to sixth respondents acceded to the applicant's requests relating to the wrongful freezing and the wrongful travel ban. As a result, the wrongful freezing and wrongful travel ban were revoked. Thus, the interim orders have in effect been fulfilled.

Conclusion

[75] Having considered the application, it is my view that the applicant's case is not frivolous and vexatious and the applicant has passed the threshold to commence judicial review proceedings. There are triable issues regarding the arrest and remand, impugned freezing order, impugned exit prohibition, and impugned travel ban. These triable issues justify further argument by the parties at the substantive stage and cannot be obliterated by the court at this stage. I am of the view that the application is amenable to judicial review.

[76] Accordingly, the application for leave to commence judicial review proceedings is hereby allowed. However, the granting of the interim order ought to be refused.